IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.258 OF 1990.

The Commissioner,
Kolhapur Municipal Corporation
Kolhapur. : Appellants.

versus

Smt.Bharati Kishore Thakkar
and others. : Respondents.

Mr.D.S.Sawant for the appellants.
Mr.V.B.Sakhare, AGP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 21st June 2005.

ORAL ORDER

1. Heard advocate for the appellants and learned AGP for the respondent - Director of Insurance, Maharashtra State. Nobody is present for Respondent Nos. 1 to 3 - the original

claimants.

2. Kishore - the husband of claimant No.1 died in an accident on 1st December 1983. On that day at about 8.45 p.m. he was going on by his bicycle where he was hit by the bus owned by the appellant. Actually there were two buses of the appellant. He died on the spot. He was aged about 36 years and was serving in Ponds (India) Ltd. as a Sale Representative at Kolhapur. Therefore, his dependents filed a claim petition. The M.A.C.T. Kolhapur held that the appellants are responsible for the accident and they were ordered to pay Rs.3,65,000/-. Out of which Rs.1,50,000/- was ordered to be paid by Opponent No.3 - Director of Insurance, Maharashtra State. Hence this appeal by the appellants.

3. The appeal is filed on both the counts i.e. negligence and quantum. So far as negligence aspect is concerned, it is clear that the deceased who was going on by his bicycle has no role to contribute in the negligence. It is total negligence on the drivers of the vehicles of the appellants and, therefore, the submissions in that regard are required to be rejected.

4. So far as quantum part is concerned, the tribunal has taken Rs.2,000/- as the monthly income of the deceased and after considering all the aspects of the matter, dependency of family was taken at Rs.1,500/- after deducting Rs.500/- from the salary towards the personal expenses of the deceased. So that aspect of the matter is proper and does not required any interference.

5. However, the tribunal applied multiplier of 20. The counsel for the appellants contended that multiplier is not properly applied and it could be at the most 15 or 16. In view of the matter and also looking to the age of the deceased multiplier of 16 appears to be proper. The amount of compensation in that case would come to Rs.2,88,000/- i.e. Rs.1,500 x 12 x 16. The tribunal has awarded Rs.5,000/- on account of loss of consortium. However, the compensation awarded is not proper. But there is no cross appeal in that regard. Therefore, the amount cannot be enhanced. As a result, the award of the tribunal is required to be modified so far as it relates to the extent of Rs.2,93,000/- out of

which Rs.1,50,000/- are to be paid by the Respondent No.5 - Director of Insurance, Maharashtra State.

6. The Counsel for the appellants contended that the accident occurred on 1st December 1983 and the tribunal has awarded interest at 12% p.a. He contended that considering the recent judgment and trend, the interest should be reduced to 9% p.a. Hence the following order.

:ORDER:

The appeal is allowed partly.

Compensation is reduced to Rs.2,93,000/-, out of which, Rs.1,50,000/- shall be paid by the Respondent No.5 - Director of Insurance, Maharashtra State.

The amount will carry interest at 12% p.a. as awarded by the tribunal up to the date of filing of the appeal before this Court and, thereafter, at the rate of 9% till realisation.

No order as to costs.

[D.G.DESHPANDE]

21/06/2005 JUDGE.